IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

DANIEL BARNES,	:	ELECTRONICALLY FILED
	:	
Plaintiff	:	
	:	
vs.	:	CIVIL ACTION NO. 3:10CV72
	:	
THE HARTFORD and	:	
CONTINENTAL CASUALTY COMPANY,	:	
	:	
Defendants	:	

DEFENDANT HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFF'S CLAIMS FOR EXTRA-CONTRACTUAL AND PUNITIVE DAMAGES AND MOTION TO STRIKE PLAINTIFF'S DEMAND FOR A JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant Hartford Life and Accident Insurance Company, incorrectly identified in the caption as The Hartford and Continental Casualty Company ("Hartford"), through its undersigned counsel, files this memorandum of law in support of its motion to dismiss plaintiff Daniel Barnes's ("plaintiff") claims for extra-contractual and punitive damages for failure to state a claim upon which relief can be granted and its motion to strike his demand for a jury trial. In his Complaint, plaintiff alleges that Hartford wrongfully denied Long-Term Disability ("LTD") benefits allegedly owed to him through a group policy of insurance issued by Hartford ("Policy"). Plaintiff's claim is governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq*. ("ERISA") (Dkt. 1, Civil Cover Sheet, "Nature of Suit," hereinafter "Civil Cover Sheet."). In addition to requesting the allegedly past due benefits, plaintiff also seeks extra-contractual and punitive damages. Plaintiff also requests that his claim be tried to a jury. It is well-established that extra-contractual and punitive damages are not available under ERISA, and that jury trials are not permitted for ERISA claims. Therefore, plaintiff's claims for extra-contractual and punitive damages must be dismissed, and his demand for a jury trial must be stricken.[1]

I. FACTUAL BACKGROUND

As a former employee of Fireline Corporation, plaintiff was a participant in the group benefit plan for its employees, which provided LTD benefits to eligible and qualified employees pursuant to the terms of the Policy. Compl. ¶¶ 4, 5. Plaintiff's claim for such benefits is governed by ERISA. (Civil Cover Sheet). In or about February, 2001, plaintiff became disabled from work and began to receive LTD benefits from Hartford. Compl. ¶¶ 6, 7. By letter dated July 25, 2008, Hartford advised plaintiff that the information available to it no longer established that plaintiff was entitled to receive LTD benefits pursuant to the terms of the Policy. Compl. ¶ 9. Plaintiff appealed and, after an independent review of plaintiff's claim on appeal, Hartford upheld its determination. Compl. ¶ 14, 15, 16. This suit followed.

II. QUESTION PRESENTED

1. Whether this Court should dismiss plaintiff's claims for extra-contractual and punitive damages pursuant to Fed. R. Civ. P. 12 (b)(6) for failure to state a claim upon which relief can be granted where the relief sought is precluded under ERISA?

Suggested Answer: YES.

[1] As set forth in the Defendant's Response to the Motion for Default Judgment (Dkt. 6), the parties had already agreed to resolve the dispute regarding the claim for extra-contractual damages and the issues raised by plaintiff's failure to name the correct defendant by dismissing the claim for those damages and amending the caption to delete any reference to Continental Casualty Company. At the request of plaintiff's counsel the Defendants had prepared a stipulation to resolve those issues as well as the issue regarding plaintiff's improper jury demand. Pursuant to an agreement between counsel, Defendants had not filed this motion while plaintiff's counsel sought authority from plaintiff regarding the striking of the jury demand. While Defendants remain hopeful they will be able to resolve all of these issues by stipulation, plaintiff's decision to seek a default judgment without notice to Defendants' counsel and in violation of the extension agreement among counsel has necessitated the filing of this motion.

2. Whether this Court should strike plaintiff's demand for a jury trial where plaintiff is not entitled to a jury trial for his ERISA claims?

Suggested Answer: YES.

III. ARGUMENT

A. STANDARD FOR A MOTION TO DISMISS.

Pursuant to Federal Rule of Civil Procedure 12(b)(6), a district court should dismiss a claim which fails "to state a claim upon which relief can be granted." In assessing a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), a court must accept the factual allegations contained in the complaint as true. Dismissal is appropriate . . . only if it appears to be a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proven in support of its claim." *Dunlap v. Ormet Corp.*, No. 5:08CV65, 2009 U.S. Dist. LEXIS 22346, *8-9 (N.D.W.V. Mar. 19, 2009) (quotations and citations omitted).

B. EXTRA-CONTRACTUAL AND PUNITIVE DAMAGES ARE PRECLUDED UNDER ERISA.

The Policy here is governed by ERISA and plaintiff has stated a claim for "damages in the amount of disability payments from the date of denial to the present." WHEREFORE Clause, p. 4. Therefore, plaintiff is seeking monetary compensation for Hartford's alleged wrongful denial of benefits pursuant to Section 502(a)(1)(B) of ERISA.[2] (Civil Cover Sheet).

[2] Although plaintiff's Complaint fails to specifically identify the section of ERISA pursuant to which he brings his claim, the fact that he seeks LTD benefits allegedly owed to him under the terms of an ERISA-qualified Policy, it is clear that his claim is brought pursuant to Section 502(a)(1)(B) of ERISA. *See Tingler v. Unum Life Ins. Co. of Am.*, No. 6:02-1285, 2003 U.S. Dist. LEXIS 5455, *8-10 (S.D.W.V. Apr. 2, 2003). This statute provides that "[a] civil action may be brought by a participant or beneficiary . . . to recover benefits due to him under the terms of (continued...)

As Courts in this Circuit have held, "[i]t is well-established case law that extracontractual damages are not available under ERISA." *Tingler v. Unum Life Ins. Co. of Am.*, No. 6:02-1285, 2003 U.S. Dist. LEXIS 5455, *16 (S.D.W.V. Apr. 2, 2003), *citing Mass. Mut. Life Ins. C. v. Russell*, 473 U.S. 134, 148 (1985). *See also Farrie v. Charles Town Races*, 901 F.Supp. 1101, 1105-1106 (N.D.W.V. 1995) (granting defendant's motion to strike plaintiff's claim for punitive and treble damages in claim for benefits under Section 502(a)(1)(B) of ERISA); *Offenberg v. UNUM Life Ins. Co. of Am., No.* 6:96-1908, 1997 U.S. Dist. LEXIS 21933, *8 (S.D.W.V. Feb. 4, 1997) (granting defendant's motion to dismiss claim for punitive damages for alleged wrongful denial of LTD benefits under ERISA because "district precedent clearly bars such recompense"); *Grover v. Central Benefits Nat'l Life Ins. Co.*, 876 F.Supp. 826, 829 (S.D.W.V. 1995) (holding that punitive damages and jury demands precluded under ERISA); *Aliff v. BP Am., Inc.*, 826 F.Supp. 178, 187-188 (S.D.W.V. 1993), *aff'd* 26 F.3d 486 (4th Cir. 1994) ("The [Supreme Court in *Russell*] ruled that the relevant text of ERISA, the structure of the entire statute, and its legislative history all support the conclusion that in § 409(a) Congress did not provide, and did not intend the judiciary to imply, a cause of action for extracontractual damages caused by improper or untimely processing of benefit claims. The Court of Appeals for this Circuit has refused to permit extracontractual or punitive damages in actions under § 502(a). *Reinking v. Phila. Am. Life Ins. Co.*, 910 F.2d 1210, 1219-20 (4th Cir. 1990). . . . Based on the *Russell* decision and the Fourth Circuit rulings, the Court does not believe §§ 502(a) and 409(a) permit recovery of extracontractual or punitive relief in any

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(continued...)

his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. §1132(a)(1)(B).

event.") (citations and quotations omitted); *Abels v. Kaiser Aluminum & Chemical Corp.*, 803 F.Supp. 1151, 1152 (S.D.W.V. 1992) ("With regard to Plaintiff's claim for punitive damages, the courts have generally held that there is no right to extra-contractual relief or punitive damages in an ERISA action seeking enforcement through § 502(a). . . . This Circuit has also held that there is no right to punitive damages in actions brought under § 502(a)(3).").

As a matter of law plaintiff cannot recover the extra-contractual and punitive damages sought in his complaint. Accordingly, plaintiff's claims for such in this case must be dismissed.

C. PLAINTIFF IS NOT ENTITLED TO A JURY TRIAL FOR HIS ERISA CLAIM.

In his Complaint, plaintiff also makes a demand for a jury trial. "Plaintiffs are not entitled to a jury trial for ERISA claims." *Tingler*, 2003 U.S. Dist. LEXIS 5455, at *17. *See also Farrie*, 901 F.Supp. at 1106-1107 (granting defendant's motion to strike jury demand and holding that, "[i]n the face of [the Fourth Circuit's holding in *Biggers v. Wittek Indus., Inc.*, 4 F.3d 291 (4th Cir. 1993),] this Court cannot imagine what facts arising under ERISA would entitle a party to a jury trial in this circuit."); *Offenberg*, 1997 U.S. Dist. LEXIS 21933, at *8 (granting defendant's motion to dismiss plaintiff's jury demand for wrongful denial of benefits claim under ERISA because Fourth Circuit precedent prohibits jury trial in ERISA actions). Accordingly, as plaintiff's complaint sets forth only one cause of action – a wrongful denial of LTD benefits under Section 502(a)(1)(B) of ERISA – his demand for a jury must be stricken.

IV. CONCLUSION

Based on the foregoing, Hartford Life and Accident Insurance Company, incorrectly identified in the caption as The Hartford and Continental Casualty Company, requests that this Court strike plaintiff's demand for a jury and dismiss his claims for extra-contractual and punitive damages pursuant to Fed. R. Civ. P. 12(b)(6) with prejudice.

Dated: November 17, 2010

/s/ John C. Hansberry
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CERTIFICATE OF SERVICE

I, John C. Hansberry, hereby certify that on November 17, 2010, a true and correct copy of the foregoing Memorandum of Law in Support of Motion to Dismiss and Motion to Strike was served via the Court's ECF system upon the following:

Kenneth J. Ford
100 Mahogany Court
Martinsburg, WV 25404

s/ John C. Hansberry
John C. Hansberry